IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No. 50 of 1998.

Judgement reserved on: 14.5.2007.

Date of decision: 11.6.2007.

Ramesh Chand Sehgal & ors. ….. **Appellants.**

Vs.

Land Acquisition Collector …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : **Mr. S.R. Sharma, Advocate.**

For the Respondent : **Mr. M.L.Chauhan, Additional Advocate General.**

Kuldip Singh, Judge.

The petitioners- claimants are in appeal against the award, dated 15.12.1997, passed by the learned District Judge, Shimla, in land reference No. 14-S/7 of 1995, rejecting the claim of the claimants for increase in compensation, but holding that claimants are entitled to refund of the amount deducted by the Land Acquisition Collector on account of income tax, allowing increase payable, under Section 23 (I-A) of the Land Acquisition Act, 1894 (for short, the Act) from 25.7.1992 to 15.11.1994.

Whether the reporters of the local papers may be allowed to see the Judgment?

2. The facts in brief are that government of Himachal Pradesh issued a Notification, under Section 4 of the Act, which was published in official gazette on 25.7.1992 for acquisition of land comprised in khasra No. 227/55, measuring 3 Bighas 16 Biswas, situate at village Kasumpti Koti, Tehsil and District Shimla, for setting up of Agriculture Research Institute. The Collector after completing the inquiry, announced the award on 15.11.1994, assessed market value of the land, structures and the trees at Rs. 22,49,553/- and paid the aforesaid amount of money alongwith the compulsory acquisition charges at the rate of 30% and increase at the rate of 12% per annum from the date of the notification to the date of deposit of the aforesaid market value in accordance with Section 23 (1-A) of the Act.

3. The petitioners- claimants filed a reference petition, under Section 18 of the Act, for enhancement of the compensation. The case of the petitioners is that the acquired land is situated in the heart of Chhota Shimla town and is a valuable piece of land. The classification of the land has not been correctly done by the Collector. According to them, 3 Bighas 12 Biswas land was Lehri Aval and only 4 Biswas of land was Gair Majrua, but the Collector has taken 3 Bighas 4 Biswas land as Lehri Aval and rest as Gair Majrua. The case of the petitioners is that market value of the Lehri Aval was not less than Rs. 90,000/- per Biswa, whereas the Collector has assessed the same at Rs. 31,607/- per Biswa only. The value of the house stood on the acquired land was two lacs, but the Collector has assessed its value at Rs. 82,742/- only. The petitioners had spent Rs. 70,000/- for developing the site by constructing a retaining wall,

but no compensation on this count has been paid. There were 20 Deodar trees on the acquired land, but the Collector has given compensation only for 12 such trees and that too on the lower side.. The Collector has deducted a sum of Rs. 65,506/- towards the payment of income tax unauthorisedly and refund of aforesaid amount alongwith interest at the rate of 18% has been sought. Increase at the rate of 12% in accordance with Section 23 (1-A) of the Act, has been given for lesser period than permissible.

4. The collector has filed the reply, in which it has been submitted that valuation has been done correctly, the petitioners are not entitled to enhancement of compensation of the land, trees and structures. The deduction of Rs. 65,506/- on account of income tax has been justified. The District Judge framed the following issues:-

1. Whether the petitioners are entitled to enhanced amount of compensation on account of acquisition of their land, trees and structures, if so, to what extent and amount? OPP.

2. Whether the petitioners are entitled to compensation on account of market value of retaining wall, if so, to what amount? OPP.

3. Whether the petitioners are not liable to pay any income tax as has been deducted by the L.A.C.? OPR.

4. Relief.

5. In issue No.1, it has been held that petitioners are not entitled to enhancement of compensation. The issue No. 2 has also been decided against the petitioners by holding that petitioners are

not entitled to compensation on account of market value of retaining wall. The issue No. 3 has been decided in favour of the petitioners by holding that amount on account of income tax has been wrongly deducted by the Collector.

6. I have heard the learned counsel for the parties and have also gone through the record.

7. The learned counsel for the appellants- claimants has submitted that the Collector has awarded less compensation to the petitioners. The findings recorded by District Judge that Lehri Aval land is inferior to Gair Majrua Rocky Land is wrong. The evidence on record has not been properly appreciated by the District Judge, and therefore, he has erred in not allowing enhancement of the compensation. The petitioners are entitled to compensation at the rate of RS. 90,000/-, per Biswa for all types of land but in appeal they are confining their claim to Rs. 75,000/- per Biswa. The sale certificates Ex. P-3/A to Ex. P-3/C and Ex. P-2 have not been properly appreciated. The acquired land is situated in the best locality of the Shimla town, where prices of land are very high. The report prepared by the expert of the petitioners has not been properly appreciated. The potentiality of the acquired land has not been taken into consideration properly. The revenue record of the acquired land showing its classification has not been properly appreciated, out of acquired land 3 Bighas 12 Biswas, is Lehri Aval and 4 Biswas is Gair Mumkin Toda. The petitioners are entitled to uniform rate of the acquired land, as against the rate allowed by Collector and District Judge. The acquired land is situated within the municipal limit and

near to built up area and has high potential value for raising construction. The average market value proved by the petitioners by way of Ex. P-1 has been wrongly rejected. On the other hand, learned Additional Advocate General, has supported the impugned award.

8. PW 1 Mohinder Singh Patwari has proved on record Ex. P-1 one year average market value of Mohal Kasumpti Koti for the period 16.6.1992 to 16.6.1993. He was recalled for re-cross examination and has placed on record average market value of the land on the basis of transactions from 15.6.1992 to 15.6.1993 Ex. R-1, which is same as Ex. P-1. PW 2 Ravinder Kumar Rana, Senior Assistant has stated that Ravinder Chadha had purchased 196.50 Sq. yards land at Chhota Shimla for Rs. 3,02,000/- in an auction held on 15.6.1993. He has proved Ex. P-2 bid confirmation letter. PW 3 Asha Nand Thakur, Kanungo (Sales) has proved sale certificates Ex. PW 3/A to Ex. PW 3/C of the sales which took place by way of public auction in 1993 at Chhota Shimla. PW 4 J.K.Mohindru, Engineer has stated that he has inspected the acquired land and the land covered by sales certificates Ex. PW 3/A to Ex. PW 3/C and has prepared his report Ex. PW 4/A and site plan Ex. PW 4/B. According to him, acquired land is better than the land covered by sale certificates Ex. PW 3/A to Ex. PW 3/C. PW 5 Hari Chand, petitioner has placed on record Ex. PW 5/A copy of jamabandi regarding acquired land. According to him, market value of Lehri Aval land was Rs. 90,000/- per Biswa and Toda Rs. 30,000/- per Biswa. He has further stated that except for sales by way of public auction for which sale

certificates Ex. PW 3/A to Ex. PW 3/C were issued, no other sale took place in the area in question during the relevant period. There were 20 Deodar trees, but they have been given compensation for 12 Deodars trees only. RW 1 Vidya Parkash, Horticulture Development Officer has stated that there were two Peach trees on the acquired land and he has assessed the value of these trees Rs.230/-. The valuation report Ex. R-1 was prepared by him. RW 2 Amar Singh Chauhan, Executive Engineer has assessed the market value of the structure existing on the acquired land, vide report Ex. RW 2/A. According to him, market value of the structure, i.e. building on the acquired land at the time of acquisition was Rs. 82,742/-. The assessment was done by him in August, 1993. He had sent the assessment report to the Director, vide letter Ex. RW 2/B. The plan of the building is Ex. RW 2/C. RW 3 Mohan Lal Patwari, Town and Country Planning Department has stated that rate of Lehri Aval land was Rs. 31,604/- per Biswa and rate of Banjar Kadim/ Ghasni land was Rs. 4,648/- per Biswa, as per assessment Ex. RW 3/A. RW 4 Rishi Ram has stated that from 1989 to 1995, he remained posted as Block Officer, Municipal Corporation, Shimla. The valuation report of trees Ex. RW 4/A, was prepared by him.

9. The question is what was the market value of the acquired land at the time of publication of Notification, under Section 4 of the Act and whether the market value of the acquired land is to be assessed at flat rate or classification-wise and what was the market value of structure and trees situated on the acquired land at the time of acquisition.

10. The respondent has placed on record market value of the structure situate on the acquired land. Amar Singh Chauhan RW 2 in his report Ex. RW 2/A has assessed the market value of the structure Rs. 82,742/-. This has not been rebutted by the petitioners by worth believing evidence. The petitioners have not proved any money separately spent by them for constructing retaining wall or developing the acquired land. The report Ex. PW 4/A, prepared by PW 4, does not show market value of the structure situated on the acquired land. Similarly, no evidence was produced by the petitioners that the market value of fruit and non-fruit trees was much more than what has been assessed by the respondent. RW 1 Vidya Parkash has prepared report Ex. R-1 of fruit trees and RW 4 has proved report Ex. RW 4/A of non-fruit trees. This evidence has also not been rebutted by the petitioners. Therefore, the market value of the structure built on acquired land and the market value of the fruit and non-fruit trees on the acquired land has been correctly assessed and it does not require any interference.

11. The petitioners have produced sale certificates Ex. PW 3/A to Ex. PW 3/C in order to prove the market value of acquired land. The Notification, under Section 4 of the Act was published in official gazette on 25.7.1992. As per Ex. P-2, House No. 88/7 was sold in Up-Mohal Chhota Shimla by way of public auction on 5.6.1993. As per Ex. PW 3/A, land measuring 233.82 Sq. meters was sold by public auction on 5.6.1993 for Rs. 3,19,287/- in Up-Mohal, Chhota Shimla. Ex. PW 3/B is the sale certificate of land measuring 172 Sq. meters sold in public auction on 5.6.1993 for a consideration

of Rs. 2,75,000/- in Up-Mohal, Chhota Shimla. Sale certificate Ex. PW 3/C is with respect to sale of land measuring 181.20 sq. meters in Up-Mohal, Chhota Shimla for a consideration of Rs. 3,00,000/- in a public auction on 5.6.1993. In Ex. P-2 sale consideration has not been mentioned. Ex. PW 3/A and Ex. PW 3/C are in favour of one Ajay Sood and Ex. PW 3/B is in favour of M/s Ashiana Restaurant. The sale certificates Ex. PW 3/A to Ex. PW 3/C are of the period much after the publication of Section 4 notification of the acquired land. The auction purchasers have not come in the witness box. There is no evidence on record that the price shown in sale certificates Ex. PW 3/A to Ex. PW 3/C is the actual market price of the land in Chhota Shimla or whether auction purchasers purchased the properties in auction as the properties were more suitable to them and were of special importance to them. The acquired land is situated in Mauza Kasumpti Koti, whereas the sale certificates Ex. PW 3/A to Ex. PW 3/C are of Up-Mohal, Chhota Shimla. There is no evidence of similarities of acquired land and properties sold by public auction. Therefore, the price shown in sales certificates Ex. PW 3/A to Ex. PW 3/C, cannot be made basis for assessing the market value of the acquired land at the time of its acquisition.

12. In jamabandi Ex. PW 5/A, area of khasra No. 227/55 has been shown 3 Bighas 16 Biswas and out of this, 3 Bighas 12 biswas is Lehri Aval and 4 Biswas as Gair Mumkin Toda. The Ex. P-1 and Ex. R-1 are average sale price of one year of Mauza Kasumpti Koti, where the acquired land is situated. These documents are prepared on the basis of eight sale transactions, as follows:-

Sr. No.	Muta -tion No.	Date of attestation of mutation	Kind of Land	Area sold	Amount of sale consider- ation	Rate per Biswa in rupees
1.	267	6.7.92	Lehri Abbal	0-5	Rs.25,000/-	Rs.5000/-
2.	268	15.9.92	Ghasni	0-4	Rs.17,000/-	Rs.4250/-
3.	269	24.9.92	Ghasni	0-4	Rs.45,000/-	Rs.11250/-
4.	271	9.12.92	Ghasni	0-8	Rs.85,000/-	Rs.10625/-
5.	272	27.2.93	Ghasni	1-16	Rs.4,50,000	Rs.12500/-
6.	273	27.2.93	Ghasni	1-16	Rs.4,50,000	Rs.12500/-
7.	274	18.1.93	Ghasni	0-4	Rs.45,000	Rs.11250/-
8.	275.	8.6.93	Banjar Kadim	0-1	Rs.11,000	Rs.11000/-

13. There is no evidence on record of sales, which can be compared with the acquired land. In these circumstances, the average price of eight sale transactions of Mauza Kasumpti Koti, where the acquired land is situated is the best method to assess the market value of the acquired land at the time of the acquisition. The market value of the land sold against mutations No. 272 and 273 per Biswa comes to Rs. 12500/- and the average price of aforesaid eight sales transactions comes much below Rs. 31,607/- per Biswa assessed and given by the Collector and approved by the District Judge. The learned District Judge on the basis of material on record is right in returning the finding that Collector has assessed the market value of the acquired land on the higher side and the petitioners are not entitled to enhancement of compensation. The District Judge, has rightly held while deciding issue No. 3 that income tax was

wrongly deducted from the compensation. 12% increase under Section 23 (1-A) has been rightly made payable from 25.7.1992 to `15.11.1994 with a direction to Collector to pay the difference, if any, in the amount already worked out. The learned counsel for the petitioners has failed to make out any case for interference.

14. No other point was urged.

15. The result of the above discussion is that the appeal is dismissed with no orders as to costs.

June 11, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**